International Labour Conference
84th (Maritime) Session 1996

REPORT IV

Partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

INTERNATIONAL LABOUR OFFICE GENEVA

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Fourth item on the agenda

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Introduction

At its 262nd Session (March-April 1995) the Governing Body of the International Labour Office examined the Report of the Tripartite Meeting on Maritime Labour Standards (Geneva, November-December 1994) and decided to include an item on the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), in the agenda of the 84th (Maritime) Session of the International Labour Conference.

It also decided that, in accordance with article 38, paragraph 4(b), of the Standing Orders of the International Labour Conference, the Office would draw up a final report on this time on the basis of the work of the Tripartite Meeting. As part of a series of measures to safeguard the financial position of the ILO, the Governing Body at its 263rd Session (June 1995) decided to postpone the holding of the Maritime Session of the Conference scheduled for January 1996. At its 264th Session (November 1995) the Governing Body decided that the Conference should be held at the end of 1996 or at the beginning of 1997.

The background to this item is briefly described in the Introduction to the Tripartite Meeting's preparatory report. [1]

That report may be read in conjunction with the present one, which consists of the Proposed Conclusions discussed by the Tripartite Meeting (Chapter I); extracts from the report of the responsible committee of the Tripartite Meeting and the discussion by the Meeting in plenary sitting (Chapter II); and the proposed English and French texts of a new Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, preceded by a brief Office commentary (Chapter III).

[1] ILO: *Partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)*, Report IV, Tripartite Meeting on Maritime Labour Standards, Geneva, 1994.

I. Proposed Conclusions concerning partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), prepared by the Office for the Tripartite Meeting on Maritime Labour Standards

Form of the international instrument

1. The International Labour Conference should partially revise the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (referred to below as "the Convention"), by adopting a Protocol.

2. The Convention should remain open to ratification with its existing Appendix only.

3. The Protocol should be open to ratification at the same time as or at any time after a Member ratifies the Convention.

Preamble

4. The Protocol should contain a Preamble referring to certain proposals with regard to a partial revision of the Convention.

Proposed Conclusions with a view to a Protocol

5. The Protocol should provide that each Member which ratifies it accepts the obligations of the Convention in respect of one or more Parts of a Supplementary Appendix to be included in the Protocol.

6. The Supplementary Appendix should have three Parts which may be accepted separately.

7. The Protocol should provide that a Member shall specify, in a declaration accompanying the instrument of ratification, the Part or Parts of the Supplementary Appendix which it accepts.

8. The Protocol should provide that a Member which has accepted only one or two Parts of the Supplementary Appendix may, by subsequent declaration communicated to the Director-General of the International Labour Office, accept the obligations of the other Part or Parts.

9. The Protocol should provide that in the case of a Member which accepts Part I of the Supplementary Appendix, the group of Conventions listed in that Part shall replace the following group of Conventions as they appear in the Appendix to the Convention:

— Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), or

— Sickness Insurance (Sea) Convention, 1936 (No. 56), or Medical Care and Sickness Benefits Convention, 1969 (No. 130).

10. The Protocol should provide that in the case of a Member which accepts Part II of the Supplementary Appendix, the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), shall replace the Repatriation of Seamen Convention, 1926 (No. 23), as it appears in the Appendix.

11. The Protocol should provide that a Member which accepts Part III of the Supplementary Appendix shall specify, in a declaration accompanying its instrument of ratification of the Protocol, or in a subsequent declaration in which it accepts Part III after ratification of the Protocol, the Conventions listed in that Part to which its acceptance extends.

12. The Protocol should provide that a Member which has not accepted all of the Conventions listed in Part III of the Supplementary Appendix may, by subsequent declaration

communicated to the Director-General of the International Labour Office, extend its acceptance to other Conventions.

13. The Protocol should provide that a Member which accepts Part III of the Supplementary Appendix shall, in the case of acceptance of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), specify in a declaration accompanying its instrument of ratification, or in a subsequent declaration in which it accepts Part III after ratification of the Protocol:

(a) the branches of social security to which its acceptance extends and for each such branch whether it undertakes to apply the minimum standards of Article 9 or the superior standards of Article 11 of Convention No. 165; and

(b) whether its acceptance extends to: (i) Part III; (ii) Part IV; (iii) Part V of Convention No. 165.

14. The Protocol should provide that in the case of the obligations of a Member which accepts Part III of the Supplementary Appendix, the Conventions in that Part to which acceptance is extended shall be added to those appearing in the existing Appendix to the Convention; this shall also apply, in the case of the Social Security (Seafarers) Convention (Revised), 1987, to the Parts of that Convention or the branches of social security.

15. The Protocol should provide that the competent authority of a Member which ratifies the Protocol but has not accepted all of the provisions of Part III of the Supplementary Appendix or has accepted only certain of them shall, at the time of ratification of the Protocol and in accordance with national practice, consult the most representative organizations of shipowners and seafarers concerning the possible acceptance or extension of acceptance of that Part.

16. The Protocol should contain a Supplementary Appendix which should read as follows:

Supplementary Appendix

Part I

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55); or

Social Security (Seafarers) Convention (Revised), 1987 (No. 165) (Article 9(a) and (b) and Article 10); or

Social Security (Seafarers) Convention (Revised), 1987 (No. 165) (Article 11(a) and (b) and Article 12).

Part II

Repatriation of Seafarers Convention (Revised), 1987 (No. 166).

Part III

Seafarer's Identity Documents Convention, 1958 (No. 108);

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133);

Seafarers' Annual Leave with Pay Convention, 1976 (No. 146);

Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164);

Social Security (Seafarers) Convention (Revised), 1987 (No. 165).

II. Proceedings of the Tripartite Meeting on Maritime Labour Standards concerning partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Extracts from the report of the Committee on Labour Inspection

Composition of the Committee

1. The Committee on Labour Inspection was set up by the Meeting at its third plenary sitting on 29 November 1994 to consider the first item of its agenda — revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), and the fourth item, the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

2. The Committee was composed of 62 members: 30 Government members, 14 Shipowner members, and 18 Seafarer members.

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4. The Committee elected its officers as follows:

Chairman: Mr. A. Roovers (Government member, Netherlands)

Vice-Chairmen: Mr. J. Cox (Shipowner member, United States)
Mr. J.-Y. Legouas (Seafarer member, France)

Reporter: Mr. C. Hamilton (Government member, United Kingdom)

5. The Committee held seven sittings. It set up one Working Group on the first item of the main agenda, another on the fourth item of the main agenda, and a Drafting Committee.

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Partial revision of Convention No. 147

General discussion

7. The deputy representative of the Secretary-General opened the discussions by introducing Report IV dealing with the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), prepared by the Office. He reviewed the events leading to the placing of this item on the agenda of this Meeting and recalled the fact that the revision of the list of Conventions in the Appendix to the Convention had been already envisaged at its adoption and repeatedly considered by the Joint Maritime Commission (JMC) and the 1986 Preparatory Technical Maritime Conference. He recalled the significance of the Appendix to Convention No. 147 which contained most of the substantive labour standards that ratifying States had to apply under the Convention. In preparing the report the Office took full account of the decisions of the ILO bodies and the experience gained as to implementation of the Convention by the Committee of Experts on the Application of Conventions and Recommendations in examining both the reports under article 22 of the ILO Constitution on its application and the article 19 reports for the 1990 General Survey. The Committee of Experts had also greatly benefited from the observations in this respect of various employers' and workers' — or shipowners' and seafarers' — organizations. Report IV took account of the replies received to the questionnaire and the draft conclusions to be discussed by the Committee were drawn from those replies. He drew attention to the attempt by the Office to respond, in its concluding considerations and suggested conclusions, to the clear wish, expressed since 1976 at successive JMC sessions and the 1986 PTMC, to consider a partial revision of Convention

No. 147 while embracing the need for flexibility expressed recently at both the International Labour Conference and the Governing Body. In this regard he referred first to the optional character of the instrument proposed and secondly to the report's suggestion for the inclusion of certain Conventions, such as the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), and the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), which had not attracted a large number of ratifications but which would become subject to the added flexibility of the notion of "substantial equivalence" in Article 2(a) of Convention No. 147. Further, as regards medical care and sickness benefit, Article 9(a) and (b) and Article 10 of Convention No. 165 were arguably more flexible than the provisions of Convention No. 130, which was already included in the 1976 Appendix. In light of the added flexibility, a greater number of member States might envisage accepting obligations in that regard, and the influence of those Conventions might be increased further.

8. The Shipowner members considered that the partial revision of Convention No. 147 should be undertaken with the aim of improving it and not just change for change's sake. In their view Convention No. 147 is the most successful and influential maritime instrument globally affecting the shipping industry. They had a number of issues that they thought could be addressed by the Working Group when set up. They mentioned such questions as the concept of substantial equivalence and its application to the instruments to be included in the Appendix, and questions relating to flag state control or port state control. They considered Report IV to be comprehensive and that it reflected well the replies received from governments.

9. The Seafarer members welcomed the partial revision of Convention No. 147 and considered Report IV to be concise and precise. In their view Convention No. 147 was the international community's way of eliminating substandard ships especially those flying flags of convenience, as was clearly indicated in the Preamble of the Convention. They considered port state control (PSC) to constitute an important element in this effort. They agreed with the proposal to set up a Working Group to deal with the detailed discussion of the questions involved. They hoped that such revision would encourage and enhance more ratifications of Convention No. 147 and the proposed Protocol.

10. The Government member of France commended the quality of Report IV and welcomed the expansion of the scope of application of Convention No. 147 by means of the revision of its Appendix. He raised the question of inclusion in the Protocol of other ILO instruments on the training and certification of able seamen, which in his view were closely linked with safety issues.

11. The Government member of the Russian Federation recalled that the revision of the Convention was envisaged already even at the time of its adoption. It was also raised subsequently on various occasions in the ILO. He stated that his country had ratified the Convention and was applying it fully. He said his delegation would be making detailed comments at the appropriate time to the Working Group.

12. The Government member of Germany welcomed the partial revision of the Convention which in his view aimed at improving labour standards on ships and was the most important task of the Meeting. The German experience supported the form of a Protocol as was suggested in Report IV.

13. The Government member of the United Kingdom, like the Government member of France, recognized the importance of training and certification of seafarers on safety questions but he considered them to be the domain of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) of the International Maritime Organization (IMO).

14. The Working Group set up to consider the draft conclusions on this item (Report IV) had two sessions. The Chairman of the Working Group in his statement to the Committee said that a certain consensus had developed; he would first outline the matters on which there was

agreement, which in his view were far-reaching, and then describe the points that remained open and unresolved.

15. He said in the first place, as regards points 1 to 3 of the draft conclusions, there was a clear consensus in favour of an optional Protocol to Convention No. 147. He stressed that, as indicated in point 2 of the draft conclusions, the Convention would in these conditions remain open to ratification with its existing Appendix only. The Protocol would, however, include a Supplementary Appendix listing certain other Conventions which States bound by Convention No. 147 could add to the list contained in the existing Appendix.

16. The Working Group was in agreement with the approach of the draft conclusions as they appear in Report IV, whereby the necessary flexibility would be left to States which ratify the Protocol, so that they may choose precisely in respect of which of the Conventions listed in the new Supplementary Appendix they wish to accept obligations.

17. The Chairman of the Working Group then indicated the Conventions which should appear in the Supplementary Appendix. These were (of the Conventions listed in the draft conclusions in Report IV): the Seafarers' Identity Documents Convention, 1958 (No. 108); the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133); the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146); the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164); and the Repatriation of Seafarers Convention (Revised), 1987 (No. 166).

18. In addition, the Working Group considered and agreed to a proposal as to the inclusion of the Workers' Representatives Convention, 1971 (No. 135). In this respect it took into account the nature of the provisions of that Convention, aiming at effective protection of workers' representatives against prejudicial acts based on their union membership or activities and the affording of facilities to enable them to carry out their functions, and the fact that it is a Convention which has received a significant number of ratifications: 53 as of 28 November 1994.

19. There were two Conventions listed in the Supplementary Appendix as it appears in Report IV which for different reasons the Working Group did not agree to include. First, on reflection, it seemed to the Working Group that it was not necessary to mention in a Supplementary Appendix the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), since this appears in the existing Appendix and was thus an option already available to States which ratify Convention No. 147. They suggested leaving it to the Drafting Committee to confirm whether this was the case.

20. The other Convention which it was not agreed to include was the Social Security (Seafarers) Convention (Revised), 1987 (No. 165). The Working Group gave considerable thought to this question and its Chairman said he was charged to transmit to the Committee the very strong desire expressed by the Seafarer members, that discussion of the possible inclusion of Convention No. 165 in the Supplementary Appendix should continue at the Maritime Session of the Conference. He added that the Government members of the Working Group raised no objection to discussion of Convention No. 165 continuing at the Conference: on the contrary, they indicated in the Working Group their willingness to agree to the Supplementary Appendix as it appears in Report IV as a whole, including Convention No. 165, given the flexibility for ratifying States of choosing among the Conventions listed. The Shipowner members of the Working Group had noted the position taken by the other members of the Working Group. For these reasons he felt confident in recommending that on this point the Committee's report should specifically state the desirability that further discussion take place at the Conference. He did not believe it was possible to go any further on that point at this Tripartite Meeting.

21. The Working Group gave its attention in addition to three other Conventions: the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the Continuity of Employment (Seafarers) Convention, 1976 (No. 145); and the Seafarers' Welfare Convention, 1987 (No. 163). Since these were all Conventions addressed to general national

policies and shore-side aspects of either labour standards in general or seafarers' employment in particular, the Working Group did not retain them for inclusion in the Supplementary Appendix at this stage.

22. Based on these discussions in the Working Group as to the contents of the proposed Supplementary Appendix, it was possible to come to conclusions as to the body of the draft Protocol dealt with in points 5 to 15 of the Proposed Conclusions. In particular, it seemed unnecessary now to divide the Supplementary Appendix into Parts. Given that the essential flexibility was to be left to ratifying States to choose which of the Conventions listed they wished to accept obligations in respect of, and that no agreement had been reached at this Meeting as to the inclusion of Convention No. 165, the added clarity sought by the Office by dividing into Parts was no longer necessary. Points 5 to 16 of the Proposed Conclusions could thus be greatly simplified for present purposes, without any change of substance — a fact which all could welcome. In particular, the Chairman of the Working Group observed that the specification contained in point 10 — that, for States which accept it, Convention No. 166 concerning repatriation replaces the older Convention No. 23 — would remain. States which accept any of the other Conventions listed in the new Supplementary Appendix would be adding them to the list of Conventions in respect of which they accept obligations.

23. The Working Group also decided, in order to increase clarity, to propose to include in the draft conclusions a provision that the Preamble to the Protocol should contain references to the relevant provisions of Convention No. 147. This, the Working Group believed, would underline the significance of the Protocol and its proposed Supplementary Appendix. The particular provisions of Convention No. 147 in question are Article 2(a) — which includes the ratifying State's undertaking as to safety standards, social security measures and shipboard conditions of employment and living arrangements and the reference to the notion of substantial equivalence — and Article 4, paragraph 1 — which refers to port state action regarding the standards of the Convention. The Working Group recommended that those two paragraphs be recited in full in the Preamble.

24. In response to the wish expressed by the Working Group, points which members of the Committee wished to raise with a view to possible amendment of the draft conclusions were passed to the Working Group for consideration. Two particular comments were raised: one by the Government of the Russian Federation, which concerned the division of the Supplementary Appendix into Parts, was discussed. In view of the Working Group's proposals, that no division of this kind was now considered necessary, they believed that comment had been taken into account. One other written comment on several points was received from the Government member of Sweden (who was himself a member of the Working Group) and these were discussed and taken into account. The Working Group also heard the wish expressed by the Government of France that consideration be given to the inclusion in the Supplementary Appendix of the Certification of Able Seamen Convention, 1946 (No. 74): this was supported by the Seafarer members but the matter was not pursued.

25. One final matter which was discussed was the question of equal opportunities and treatment on board ship. The Seafarer members of the Working Group raised the question of the inclusion in the Supplementary Appendix of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Working Group took account of the advice given in Report IV, to the effect that, for legal and practical reasons as well as matters of principle, Conventions such as this which relate to national policies and moreover basic human rights subjects would be better dealt with not in a Supplementary Appendix but in a separate provision to be added to provisions contained in the body of Convention No. 147. For this purpose, it would be necessary to consider the adoption by the Committee and then by the plenary of the Tripartite Meeting of a resolution suggesting that the Maritime Session of the Conference consider including in the Protocol a provision to the effect that *the provisions of the Convention and the Protocol should be applied without any discrimination on the basis of race, colour, sex,*

religion, political opinion, national extraction or social origin, or on any other basis as may be determined by the Member, thus using the wording of Article 1 of Convention No. 111. This was a matter which the Committee might wish to consider further.

26. The Chairman of the Working Group concluded by conveying its recommendation that the Drafting Committee be asked to recast the draft conclusions in the light of the discussions he had described.

27. The Shipowner members expressed their appreciation of the statement made by the Chairman of the Working Group and said it accurately reflected the deliberations of the group. They also stated that they had taken due note of the views expressed by the Seafarer members of the Working Group.

28. The Seafarer members joined the Shipowner members in their appreciation of the report of the Chairman of the Working Group which was a true reflection of the work of the Working Group. While they welcomed the agreement reached on a large number of issues, they thought the period leading up to the Conference should be used for further reflection on the outstanding points.

29. The deputy representative of the Secretary-General stated that the proposals made by the Working Group on Convention No. 147 would be processed in the form of an amendment and submitted as such the following day for adoption by the Committee and subsequent consideration by the Drafting Committee.

30. Following the assurances given by the Chairman that the report made by the Chairman of the Working Group would be fully reflected in the report of this Committee, the Seafarer members withdrew their draft resolution concerning reference in the proposed Protocol to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

31. The Government member of the United States, seconded by the Government member of Sweden, submitted the following amendments to the Proposed Conclusions on agenda item IV, which were approved by the Committee:

Proposed Conclusions

1. Add to the proposed Preamble the text of Article 2(a) and Article 4, paragraph 1, of the Convention.

2. Delete "Part I ... Part II ... Part III" in the draft Supplementary Appendix.

3. Delete all references to the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165).

4. Add in the draft Supplementary Appendix the Workers' Representatives Convention, 1971 (No. 135).

5. Make consequent drafting changes to paragraphs 5 to 15 of the Proposed Conclusions.

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Adoption of the report

97. At its seventh sitting on 8 December 1994, the Committee unanimously adopted the present report on its proceedings, together with the Appendices, for submission to the plenary of the Meeting.

Proposed Conclusions concerning the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), submitted by the Committee

Form of the instrument

1. The International Labour Conference should partially revise the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (referred to below as "the Convention") by adopting a Protocol.

2. The Convention should remain open to ratification with its existing Appendix only.

3. The Protocol should be open to ratification at the same time as or at any time after a Member ratifies the Convention.

Preamble

4. The Protocol should contain a Preamble referring to certain proposals with regard to a partial revision of the Convention.

5. The Preamble to the Protocol should also refer to the provisions of Article 2(a) of the Convention, which states that:

> Each Member which ratifies the Convention undertakes to have laws or regulations laying down, for ships registered in its territory — (i) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship; (ii) appropriate social security measures; and (iii) shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned; and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention, in so far as the Member is not otherwise bound to give effect to the Conventions in question.

and Article 4, paragraph 1, of the Convention, which states that:

> If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of the Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

Operative provisions of the Protocol

6. The Protocol should provide that a Member which ratifies it accepts the provisions of the Convention in respect of one or more Conventions included in a Supplementary Appendix to the Protocol.

7. The Protocol should provide that a Member should specify, in a declaration accompanying the instrument of ratification, which Conventions listed in the Supplementary Appendix it accepts.

8. The Protocol should provide that a Member which has not accepted all of the Conventions listed in the Supplementary Appendix may, by subsequent declaration communicated to the Director-General of the International Labour Office, extend its acceptance to other Conventions listed therein.

9. The Protocol should provide that, in the case of a Member which accepts the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), this should replace the Repatriation of Seamen Convention, 1926 (No. 23), as it appears in the existing Appendix to the Convention.

10. The Protocol should provide that, in the case of a Member which accepts any of the Conventions listed other than the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), such Convention or Conventions should be added to the existing Appendix.

11. The Protocol should provide that the competent authority of a Member which ratifies the Protocol, but has not accepted all of the Conventions listed in the Supplementary Appendix, should, at the time of ratification of the Protocol and in accordance with national practice, consult the most representative organizations of shipowners and seafarers concerning the possible acceptance of other such Conventions.

12. The Protocol should contain a Supplementary Appendix which should read as follows:

Supplementary Appendix

Seafarers' Identity Documents Convention, 1958 (No. 108);

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133);

Workers' Representatives Convention, 1971 (No. 135);

Seafarers' Annual Leave with Pay Convention, 1976 (No. 146);

Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164);

Repatriation of Seafarers Convention (Revised), 1987 (No. 166).

Discussion by the Tripartite Meeting in plenary sitting

First and fourth items on the agenda: Report of the Committee on Labour Inspection

Mr. Hamilton (Government delegate, United Kingdom; Reportor of the Committee), in presenting the report of the Committee, explained that it dealt with two of the Meeting's agenda items: revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), and the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

With reference to Convention No. 147, the Committee recommended that the next Maritime Session of the International Labour Conference should partially revise the Convention by adopting a Protocol which would have a Supplementary Appendix containing six Conventions. Any Member that ratified the Protocol would have the option as to how many of the Conventions listed in the Supplementary Appendix it would accept.

With reference to Recommendation No. 28, the Committee recommended that the Conference should adopt both a Convention and Recommendation concerning inspection of seafarers' working and living conditions, and that these should supersede the current instrument. He said that the question of whether or not the proposed new instruments should be limited to flag state control or expanded to port state control caused considerable debate, but the conclusions dealt only with flag state control.

Mr. Cox (Shipowner delegate, United States; Vice-Chairman of the Committee) said that the Shipowner members had discussed the issues raised in a spirit of cooperation, professionalism and a desire to take the correct action. This approach had prevailed throughout the meeting. Although the Shipowner members at the outset wanted a Recommendation, the Committee had agreed on Proposed Conclusions both with a view to a Convention and a supplementary Recommendation. The agreed conclusions were acceptable to the Shipowner even if they were a bit verbose.

Mr. Legouas (Seafarer delegate, France; Vice-Chairman of the Committee) said that the Seafarer members had comments both on what had been done and what remained to be done. The Seafarer members noted that the fact that both agenda items had been discussed by the same Committee was not pure chance, and it was unfortunate that many members of the Committee had not made any link between the two instruments.

According to the Seafarer members the contents of the new Appendix to Convention No. 147 should not be considered exhaustive. The Seafarers would have liked to see other instruments, such as Conventions Nos. 109, 111, 144, 145 and 163, included and they found the French proposal to include Convention No. 74 very interesting. The Seafarer members supported the transformation of Recommendation No. 28 into two instruments — a Convention and a Recommendation. The principle of annual inspection of ships by member States was considered to be important. The Seafarer members noted that the systematic recourse to the use of classification societies for inspections was not a panacea and had been proven deficient by numerous examples. They also felt that a certificate was necessary for making inspections effective. Though certain governments had opposed port state control provisions in the Convention, the Seafarers would be in favour of such provisions being included at the Conference.

Mr. Roovers (Government delegate, Netherlands; Chairman of the Committee), noting that the two Vice-Chairmen had given a clear analysis of their viewpoints, thanked them, as well as the Chairmen of the two Working Ggroups established to deal with Convention No. 147 and Recommendation No. 28, for their work. He said that although the Committee, in retrospect, did not have the most difficult issues to discuss, it did have two of the four agenda items. This, and the sheer number of amendments introduced, had placed considerable burden on the participants. However, the final product was a good one. The proposals should be carefully considered before the Conference. In particular, concerns had been voiced as regards the requirement of annual inspections. The product was well-balanced and he commended it — including both the report and conclusions — to the plenary for adoption.

The Meeting unanimously adopted the report of the Committee on Labour Inspection.

The Meeting then proceeded to examine the Proposed Conclusions concerning the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

The Meeting unanimously adopted the Proposed Conclusions concerning the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

The Meeting then proceeded to examine the Proposed Conclusions concerning the inspection of seafarers' working conditions.

Mr. Maassen (Government delegate, Germany) drew attention to the conclusions concerning labour inspection as regards the term "registered in the territory of the Members". He noted that the representative of Germany participating in the Committee on Wages had raised the point that the wording should instead read "flying the flag of a member State", and that the Legal Adviser was to investigate this matter so that it could be addressed in the report prepared by the Office for the Conference. He expressed his hope that this also could be done with regard to the proposed Convention on labour inspection.

The Meeting unanimously adopted the proposed conclusions concerning the inspection of seafarers' working conditions.

III. Proposed text

The text of a proposed Protocol to Convention No. 147 appears below. It is based on the Conclusions adopted unanimously by the Tripartite Meeting on Maritime Labour Standards, rearranged and modified by the Office where it was felt necessary in order to avoid repetitions and inconsistencies. The text contains the substance of all the points adopted by the Tripartite Meeting.

There are two matters on which agreement was not reached at the Tripartite Meeting.

First, the Chair of the Working Group of the responsible Committee of the Tripartite Meeting referred to the desirability of further discussion at the Conference regarding the Social Security (Seafarers) Convention (Revised), 1987 (No. 165).[1] The Proposed Conclusions prepared by the Office for the Tripartite Meeting had suggested the inclusion of Convention No. 165 in a supplementary Appendix for two reasons. In the first place, Convention No. 165 contains provisions regarding medical care and sickness benefit which are more modern than those of the Sickness Insurance (Sea) Convention, 1936 (No. 56), and simpler and more flexible than those of the Medical Care and Sickness Benefits Convention, 1969 (No. 130), both of which are included in the existing Appendix to Convention No. 147. In the second place, Convention No. 165 contains provisions as to shipowners' liability which are somewhat simplified by comparison with the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) — also included in the existing Appendix to Convention No. 147 — and alternative minimum and superior standards for other branches of social security, in respect of which States ratifying the Protocol might similarly accept provisions at the minimum or superior level.

Secondly, the Chair of the Working Group referred[2] to the discrimination (Employment and Occupation) Convention, 1958 (No. 111), and to the suggestion that the Protocol might contain a provision to the effect that *the provisions of the Convention [No. 147] and the Protocol should be applied without any discrimination on the basis of race, colour, sex, religion political opinion, national extraction or social origin, or on any other basis as may be determined by the Member*.

This, he said, was a matter which the Committee might wish to consider further.

The Office would suggest that the consultation of representative organizations of shipowners and seafarers (dealt with in Article 4 of the draft text below) could alternatively be addressed in a new paragraph 3 of Article 3, envisaging consultation not limited to "the time of ratification". The new paragraph might read as follows:

> 3. For the purpose of paragraphs 1 and 2 of this Article, the competent authority shall, in accordance with national practice, consult the most representative organizations of shipowners and seafarers concerning the possible acceptance of Conventions listed.

Finally the Office has introduced a preambular paragraph referring to the entry into force of the United Nations Convention on the Law of the Sea, 1982, in response to an appeal made by the United Nations General Assembly in resolution 49/28 of 19 December 1994 to identify measures that may need to be taken "with a view to ensuring a uniform, consistent and coordinated approach to the implementation of the provisions of the Convention throughout the United Nations system". This insertion by the Office is also to ensure consistency between the various ILO instruments under discussion.

The text would also include standard final provisions appropriate to the Protocol.

[1] See para. 20 in the extract of that Committee's report in Chapter II above.

[2] Para. 25 of the Committee's report.

PROPOSED TEXT

(English version)

The following is the English version of the proposed Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, which is submitted as a basis for a single discussion at the 84th (Maritime) Session of the Conference, as the fourth item on the agenda.

Proposed Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-fourth Session on ... 1996, and

Noting the provisions of Article 2 of the Merchant Shipping (Minimum Standards) Convention, 1976 (referred to below as "the principal Convention"), which states in part that:

Each Member which ratifies this Convention undertakes:

(a) to have laws of regulations laying down, for ships registered in its territory —

(i) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship;

(ii) appropriate social security measures; and

(iii) shipboard conditions of employment and living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned;

and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention, in so far as the Member is not otherwise bound to give effect to the Conventions in question,

and

Noting also the provisions of Article 4, paragraph 1, of the principal Convention, which states that:

If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health,

and

PROPOSED TEXT

(French version)

The following is the French version of the proposed Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, which is submitted as a basis for a single discussion at the 84th (Maritime) Session of the Conference, as the fourth item on the agenda.

Projet de protocole de 1996 relatif à la convention sur la marine marchande (normes minima), 1976

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le .. 1996, en sa quatre-vingt-quatrième session,

Notant les dispositions de l'article 2 de la convention sur la marine marchande (normes minima), 1976 (ci-après dénommée «la convention principale»), qui prévoit notamment que:

Tout Membre qui ratifie la présente convention s'engage:

a) à édicter une législation à l'égard des navires immatriculés sur son territoire en ce qui concerne:

i) les normes de sécurité, y compris celles ayant trait à la compétence de l'équipage, à la durée du travail et à son effectif, afin d'assurer la sauvegarde de la vie humaine à bord des navires;

ii) un régime approprié de sécurité sociale;

iii) les conditions d'emploi à bord et les arrangements relatifs à la vie à bord, dans la mesure où, à son avis, ils ne sont pas couverts par des conventions collectives ou déterminés par des tribunaux compétents d'une façon qui lie de la même manière les armateurs et les gens de mer intéressés;

et à vérifier que les dispositions d'une telle législation équivalent, dans l'ensemble, aux conventions ou aux articles de conventions auxquels il est fait référence dans l'annexe à la présente convention, pour autant que le Membre ne soit pas autrement tenu de donner effet aux conventions en question,

et

Notant aussi les dispositions de l'article 4, paragraphe 1, de la convention principale, qui prévoit que:

Si un Membre, qui a ratifié la présente convention et dans le port duquel un navire fait escale dans le cours normal de son activité ou pour une raison inhérente à son exploitation, reçoit une plainte ou acquiert la preuve que ce navire n'est pas conforme aux normes figurant dans la présente convention, après que celle-ci sera entrée en vigueur, il peut adresser un rapport au gouvernement du pays dans lequel est immatriculé le navire, avec copie au Directeur général du Bureau international du Travail, et prendre les mesures nécessaires pour redresser toute situation à bord qui constitue clairement un danger pour la sécurité ou la santé,

et

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Having decided on the adoption of certain proposals with regard to the partial revision of the principal Convention, and

Having determined that these proposals should take the form of a Protocol to the principal Convention,

adopts, this ... day of ... one thousand nine hundred and nine-six, the following Protocol, which may be cited as the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976:

Article 1

Each Member which ratifies this Protocol shall extend the list of Conventions appearing in the Appendix to the principal Convention to include one or more of the Conventions listed in the Supplementary Appendix below.

Article 2

A Member may ratify this Protocol at the same time as or at any time after it ratifies the principal Convention, by communicating its formal instrument of ratification of the Protocol to the Director-General of the International Labour Office for registration.

Article 3

1. Each Member which ratifies this Protocol shall, in a declaration accompanying the instrument of ratification, specify which Convention or Conventions listed in the Supplementary Appendix it accepts.

2. A Member which has not accepted all of the Conventions listed in the Supplementary Appendix may, by subsequent declaration communicated to the Director-General of the International Labour Office, extend its acceptance to other Conventions listed.

Article 4

The competent authority of each Member which ratifies this Protocol but has not accepted all of the Conventions listed in the Supplementary Appendix shall, at the time of ratification of the Protocol and in accordance with national practice, consult the most representative organizations of shipowners and seafarers concerning the possible acceptance of other Conventions listed.

Article 5

For the purpose of this Protocol, the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), shall, in the case of a Member which accepts it, be regarded as a replacement of the Repatriation of Seamen Convention, 1926 (No. 23).

Rappelant l'entrée en vigueur, en date du 16 novembre 1994, de la Convention des Nations Unies sur le droit de la mer, 1982, et

Après avoir décidé d'adopter diverses propositions relatives à la révision partielle de la convention principale, et

Après avoir décidé que ces propositions prendraient la forme d'un protocole relatif à la convention principale,

adopte, ce ... jour de ... mil neuf cent quatre-vingt-seize, le protocole ci-après, qui sera dénommé Protocole de 1996 relatif à la convention sur la marine marchande (normes minima), 1976.

Article 1

Tout Membre qui ratifie le présent protocole étendra la liste des conventions figurant en annexe à la convention principale pour y inclure l'une ou plusieurs des conventions énumérées dans l'annexe supplémentaire ci-après.

Article 2

Un Membre peut ratifier le présent protocole en même temps qu'il ratifie la convention principale, ou à tout moment après la ratification de celle-ci, en communiquant son instrument formel de ratification du protocole au Directeur général du Bureau international du Travail aux fins d'enregistrement.

Article 3

1. Tout Membre qui ratifie le présent protocole doit préciser, dans une déclaration accompagnant son instrument de ratification, laquelle ou lesquelles des conventions énumérées dans l'annexe supplémentaire il accepte.

2. Un Membre qui n'a pas accepté toutes les conventions énumérées dans l'annexe supplémentaire peut, par une déclaration ultérieure communiquée au Directeur général du Bureau international du Travail, étendre son acceptation à d'autres conventions mentionnées dans ladite annexe.

Article 4

L'autorité compétente de tout Membre qui ratifie le présent protocole et qui n'a pas accepté toutes les conventions énumérées dans l'annexe supplémentaire doit, au moment de la ratification du protocole et conformément à la pratique nationale, consulter les organisations les plus représentatives d'armateurs et de gens de mer sur la possibilité d'étendre ladite acceptation à d'autres conventions mentionnées dans ladite annexe.

Article 5

Aux fins de l'application du présent protocole, la convention (n° 166) sur le rapatriement des marins (révisée), 1987, doit, dans le cas d'un Membre qui l'a acceptée, être considérée comme se substituant à la convention (n° 23) sur le rapatriement des marins, 1926, telle qu'elle est mentionnée dans l'annexe à la convention principale.

Supplementary Appendix

Seafarers' Identity Documents Convention, 1958 (No. 108)

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)

Workers' Representatives Convention, 1971 (No. 135)

Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)

Repatriation of Seafarers Convention (Revised), 1987 (No. 166)

Annexe supplémentaire

Convention (n° 108) sur les pièces d'identité des gens de mer, 1958

Convention (n° 133) sur le logement des équipages (dispositions complémentaires), 1970

Convention (n° 135) concernant les représentants des travailleurs, 1971

Convention (n° 146) sur les congés payés annuels (gens de mer), 1976

Convention (n° 164) sur la protection de la santé et les soins médicaux (gens de mer), 1987

Convention (n° 166) sur le rapatriement des marins (révisée), 1987

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